1142.

SUPREME COURT OF THE UNITED STATES.

No. 55.

JAMES B. ANDREWS, APPELLANT,

vs.

WILLIAM H. WALL AND JOHN H. GEIGER.

ON APPEAL FROM THE COURT OF APPEALS, FLORIDA.

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TERRITORY OF FLORIDA:

JAMES B. ANDREWS, Appellant,
vs.
WM. H. WALL and JOHN H. GEIGER, Appellees.

Pleas at the court-house in the city of Tallahassee, before the honorable court of appeals, for said Territory, on the fifteenth day of January, A. D. one thousand eight hundred and forty-two:

Present, hon. Dillon Jordon, pres't, hon. Isaac H. Bronson, hon. Sam'l W. Carmack, hon. Sam'l J. Douglas, associate judges.

Be it remembered that heretofore, to wit, on the thirtieth day of November, A. D. one thousand eight hundred and forty-one, the appellant filed in the clerk's office of said court of appeals the following record, which record is in the words and figures following, to wit:

SUPERIOR COURT,
Southern district of Florida, } In Admiralty.

WILLIAM H. WALL & JOHN H. GEIGER,
vs.
JAMES B. ANDREWS.

Be it remembered that, on the fourth day of June, in the year one thousand eight hundred and forty-one, William H. Wall and John H. Geiger, by their proctor, Stephen R. Mallory, filed with the clerk of said court, their petition, that the said clerk be ordered to retain such portion of salvage money lately decreed to the sloop Globe, in the case of Thomas Greene and others vs. the Ship Mississippi and cargo, as under a certain consortship in said petition alleged to be due to the schooner George Washington, whereof said petitioners are part owners; which said petition is in the word and figures following:

To the honorable Wm. Marvin, judge of the United States superior court, southern judicial district of Florida.—In Admiralty.

Your petitioners respectfully represents, on oath, to your honor, that they, with J. A. Thouron, are the only owners of the schooner George Washington; that said schooner has for some time past been consorted with the sloop Globe, in the business of wrecking upon this reef, and was so consorted with said sloop when that vessel performed the services to the ship Mississippi which have resulted in the payment of salvage to said sloop by your honor, in admiralty, on the 31st day of May, 1841; that a portion of said salvage is justly due and owing unto your petitioners from said consortship, and that the master and agent of said sloop Globe, J. B. Andrews, positively refuses to pay to them any portion of the same.

They therefore respectfully represent this matter, and pray the interference of your honor, that you may order the clerk of your honor's court to retain such portion of said salvage, now about to be paid to said sloop, as to your honor may appear equitable under said consortship, due to said petitioners as owners of schooner the George Washington. And they are ready to show to your honor the exact sum due to them under said consortship. And will ever pray.

W. H. WALL,
JOHN H. GEIGER,
S. R. MALLORY,
Proctor.

Signed and sworn to, before me,

S. R. MALLORY, *J. P.*

And thereupon the judge of said court endorsed on the said petition his order in the words and figures following:

AT CHAMBERS, *June* 14*th*, 1841.

Let $\$2{,}455\frac{64}{100}$ of the salvage decreed the sloop Globe, in the case of the Mississippi, be retained by the clerk until further orders be given, and let a copy of this petition and order be served upon J. B. Andrews.

WM. MARVIN, *Judge.*

Afterwards, to wit, on the seventh day of June, in said year, came the said petitioners by their said proctor, and also came the said James B. Andrews, by his proctor, William R. Hackley, before said court sitting in admiralty at the court-house in Key West, in said district, and proceeded to the hearing of this cause, and after the examination of witnesses, the same was continued till the tenth day of said month of June.

Afterwards, to wit, on the eighth day of said month of June, the said petitioners, by their said proctor, filed in the said clerk's office their petition further in this cause, in form following:

To the honorable Wm. Marvin, judge of the United States superior court, southern judicial district of Florida.—In Admiralty.

The petition of John H. Geiger and Wm. H. Wall, of Key West, respectfully makes known to your honor that a portion of the salvage decreed by your honor to the sloop Globe on the 31st May, 1841, for certain services to the ship Mississippi, has been stayed in the hands of your clerk by them; that the said sum of money is justly due and owing to them, and others for whom they act, as they are prepared to prove if denied, it being the sum accruing to the schooner George Washington, of which they, with J. A. Thouron, are owners, from her consortship with said sloop Globe when that vessel performed the services aforesaid. They therefore pray that your honor will order the clerk to pay to your petitioners the said sum of money, and compel the said sloop Globe, and all in her

interested, to pay the costs of these proceedings. And they will ever pray.

W. H. WALL,
JOHN H. GEIGER,
S. R. MALLORY,
Proctor.

Signed and sworn to, before me,

S. R. MALLORY, *J. P.*

Afterwards, to wit, on the ninth day of said month the said James B. Andrews, by his said proctor, filed with the said clerk his answer to the said petition, in the following words and figures:

To the honorable Wm. Marvin, judge of the superior court for the southern judicial district of Florida.

The answer of James B. Andrews, part owner of the sloop Globe, would respectfully represent, that a notice of a petition filed by Wm. H. Wall and John H. Geiger, who claim as part owners of the schooner George Washington, claiming a part of the salvage decreed to Thos. Greene, master of the sloop Globe, in the case of Thomas Greene et als. vs. Ship Mississippi and cargo, and has been served upon him. To which he comes into court, and says that—

First. The petitioners have no right to come into your honorable court in this summary way, and obtain a decree against the earnings of the master and crew of the sloop Globe, who were *libilants* in the above case.

Second. That if there is any thing due by the Globe, her crew and owners, it must be by some contract existing at the time the services for which salvage has been decreed were rendered, and that if such contract exists, it was not made with petitioners by your respondent.

Third. Your respondent admits that there was a consortship or agreement entered into previously to the services rendered to the ship Mississippi by him as master of the sloop Globe, and Russel, master of the schooner Geo. Washington, by which they agreed to divide their respective earnings or gain between each other, their crews, and the owners of the respective vessels in a certain proportion, viz: The Globe was to be rated at 63 tons, and the Geo. Washington at 53 tons, and the number of men each vessel might have on board at the time that any money might be earned. But he alleges that such contract was made between him and Captain Russel for an indefinite time, and considered that it only remained in force so long as they both remained on board of their respective vessels and earned salvage; and that at the time the money in dispute was earned, that Thomas Green the mate of the Globe was master, and in that capacity rendered services to the ship Mississippi, and filed a libel in his own name as such, and being recognized as master by this court, salvage on the said ship was decreed to him in his own name.

Whereupon your respondent prays that your honor will dismiss the said petition, and that the amount of the money retained from the salvage decreed to Thos. Green be paid over to him, together with his costs in this behalf expended. And your respondent, &c.

JAMES B. ANDREWS,
W. R. HACKLEY,
Proctor for Respt.

Sworn to before me, this 9th June, 1841.
H. W. SPENCER, *Deputy Clk.*

Afterwards, to wit, on the tenth day of same month of June the said petitioners, by their said proctor, filed in said clerk's office their replication to the foregoing answer, as follows:

To the hon. Wm. Marvin, judge of the United States superior court, S. J. D. of Florida.—In Admiralty.

The replication of Wm. H. Wall and John H. Geiger, who have filed a libel in form of a petition, praying payment to them of certain moneys detained in the clerk's hands of said court, claimed by James B. Andrews, to the answer and claim of said Andrews. And these repliants, saving and reserving to themselves all advantages from the manifold errors in said answer contained, say, that said answer is evasive, insufficient, and untrue; and they therefore pray, as they have heretofore prayed.

S. R. MALLORY,
KEY WEST, *June 10th*, 1841. *Proctor for petitioners.*

And on the same tenth day of June, before said court sitting in admiralty at the said court house, came the said parties by their respective proctors, and after argument of counsel, the court not being fully advised what order to make in the premises, this cause was continued till the twelvth day of said month.

Afterwards, to wit, on the said twelvth day of June, came the said parties before said court, as last aforesaid, and the court now being fully advised what decree and order to make in the premises, the same was rendered in form following:

WALL & GEIGER,
vs.
JAMES B. ANDREWS.

The court having decreed to Thomas Green and others salvage for their services rendered to the ship Mississippi and cargo, and the same being paid into court, Wall and Geiger, part owners of the schooner George Washington, now file petitions, setting forth that the schoner was consorted with the sloop Globe, whereof Greene was temporary master, at the time Greene rendered the salvage services to the Mississippi, and that in consequence, and by virtue of such consortship, the owners and crew of the George Washington are entitled to a proportion of the salvage thus decreed to Greene, and they pray the court to stay by order such proportion in the clerk's hands, and decree the same to them.

Notice having been given to Andrews, part owner of the Globe, he appears and opposes the prayer of the petitioners on the following grounds:

1st. That the petitioners have no right to come into court in this summary manner.

2d. That the consortship was entered into between the masters of the Globe and the George Washington, and that they had not authority to bind the owners and the crews.

3d. That the master of the Globe, Andrews, with whom the consortship was made, having temporarily left the vessel, and placed Greene in command, Greene, the owners, and the crew, could not be bound by any consortship previously made. That the consortship being indefinite as to duration, must be held binding no longer than the respective masters continued in command.

1st. The petitioners have no right to come into court in this summary manner. The consortship in this case is clearly of admiralty jurisdiction; it is maritime in its nature; a libel in personam would have been sustained for a breach of it. The proportion of salvage claimed by the petitioners for the George Washington by virtue of the consortship is in court. If the consortship be binding, no valid reason can be discovered why the petitioners may not ask for an order that it be paid to them. *While money or property is in court, or subject to its order, the court may make such decree in regard to its disposition as law and equity require.* This it may do on petition or on a supplimental libel. If the parties interested be numerous, a supplimental libel is preferable. Whichever mode is adopted, the court will see that persons interested in the money or property have due notice of the proceedings before it will make a decree affecting their interests. When the money or property is gone from the possession of the court, or its officers, summary proceedings, like the present, can rarely be entertained; in proceedings in *rem*, while the *res* is in *custodia legis*, it is under the control of the court, and the court may review, change, and alter any decree made in regard to it. To obtain, however, the alteration or amendment of the decree once pronounced, a *libel of review* should ordinarily be filed; no alteration or amendment of the decree of salvage need be made in this case; a libel of review is therefore unnecessary.

The strong objection urged under this head is, that there are not proper parties to this proceeding—that Greene should have notice of the application. But why give Greene *in particular* the notice, why not all the owners of the Globe? Why not the crew? Why not her other consorts, if she have any? It is a general rule that all persons interested in a suit of admiralty should be made parties plaintiffs or defendants. If the proceedings be in *rem*, claimants may come in under the monition and defend. But if the persons interested be *very numerous*, it becomes oftentimes *practically impossible* to make them all parties. *A part sue* and a *part defend*, on behalf of themselfs and all others interested. When numerous persons are interested, no other rule can be laid down than this, that

will see that it can do substantial justice between the parties before it, and no injustice to those persons who are not in court.

In the present case Greene's interest will not be affected by the order made, and the crew are represented by the master and part owner of the Globe. Besides, generally, notice to the proctor of persons who have instituted a suit for salvage is notice to all persons whom he represents.

I think on this point the proceedings of the petitioners are regular, that they are fairly in court, that the court may exercise this summary jurisdiction, and that for all the purposes of this application the proper parties have been notified.

2d. That the masters who entered into the consortship had not authority to bind the owners and crew. The rule is, that the master has authority to bind his owners by contracts relative to the usual employment of the vessel. 3d Kent, 161. Wrecking was the usual employment of these vessels, and the consortship entered into was within the scope of the masters' authority, and binds owners and crews. A consortship fairly entered into between the masters of wrecking vessels will be binding according to its terms. If it be simply *man for man and ton for ton, or eaqually*, or made in any other general terms without specifying particulars, it will bind owners, masters and crews.

Owners may sue for breach of consortship entered into by the master.

3d. The consortship terminated or was avoided by Andrews leaving the Globe, and Greene going master. If consortship solemnly entered into could be broken or avoided by a change of masters, immense frauds would ensue. Masters who happen to be consorted would resign their command and substitute some one else master as soon [as] they received inteligence that their vessels were about to be needed. The parties may make their own bargain, and if they specify the terms, the court will enforce them. If they agree that a change of masters shall disolve the consortship, then such change will dissolve it. But if the terms be not specified—if they simply consort *man for man and ton for ton, as in this case*, without further terms, no change of the master of either vessel will dissolve the consortship. The contract will still bind the owners and crews of the respective vessels, notwithstanding such change. It can never be in the power of the master to escape from the obligation of the contract by leaving the vessel. Whether the shares of the master newly appointed to the command are to be effected by a previous consortship, is another question, and need not now be decided. Perhaps he might be entitled to draw from the salvage decreed his vessel the same amount of money that he would be entitled to if no such consortship existed. But the interest of the consort is not to be effected by any such change.

The consortship in this case is admitted and proved to be, that the Globe was to draw for 63 tons, and the George Washington for

53; it was in existance and not dissolved at the time the salvage was earned in the case of the Mississippi; the vessels were to draw in proportion to the number of men each should have on board. The *bargain must be fulfiled.*

Ordered, That the clerk ascertain the number of men on board the sloop Globe and George Washington respectively, at the time of the earning of the salvage by the Globe for services rendered the Mississippi and cargo, and that he divide the salvage in that case decreed the Globe, between the Globe and the George Washington, man for man and ton for ton, taking the Globe at 63 tons, and the George Washington at 53 tons, and that he pay to Wm. H. Wall and John H. Geiger the George Washington's portion for and on behalf of all persons interested therein.

Ordered, That each party pay his own costs in this suit.

WM. MARVIN, *Judge.*

Whereupon the above decree and order being pronounced in open court, the said James B. Andrews prayed an appeal to the court of appeals, and filed his bond with Fielding A. Browne as security for the payment of costs, which bond and security is approved by the court, and the said appeal is allowed. And thereupon, the said Wm. H. Wall and John H. Geiger, file in court their bond with security, conditioned for the payment into court of the sum of money adjudged to them by the said decree upon the order of the court of appeals, and pray that the said sum of money may be paid them in pursuance of the above decree, notwithstanding the aforesaid appeal of James B. Andrews, and it is ordered to be paid them accordingly, the said bond of Wall and Geiger and their security being approved by the court. Whereupon, the said James B. Andrews appeals from the order last above made, and notwithstanding such last appeal, the clerk is ordered to pay the said money to Wall and Geiger as by the decree first above made.

And thereupon, the clerk of said court, pursuant to the foregoing decree and order, ascertained the number of men on board the sloop Globe and schooner George Washington respectively, at the time of the earning of the said salvage by the Globe as aforesaid, and found the number on board the said sloop Globe to be ten men and one boy, recconed in the division at ten and a half men; and the number on board the said schooner George Washington to be eight men, and then made the division of the said salvage man for man and ton for ton, as appears from the statement following:

SUP. COURT:

WM. H. WALL and JOHN H. GEIGER
vs.
JAMES B. ANDREWS.
} In Admiralty.

Statement of the division of the salvage decreed to the sloop Globe, in the case of Thomas Greene et al. vs. Ship Mississippi and

cargo, between said sloop and the schooner George Washington, pursuant to the decree and order of said court, made June 12th, 1841.

Whole amount of salvage decreed to sloop Globe in said case		$5,522 49
Proportion to sloop Globe at 63 tons	$1,499 65	
And 10½ men	1,567 20	
	$3,066 85	
Proportion to schooner George Washington at 53 tons	$1,261 59	
And 8 men	1,194 05	
Paid to petitioners	$2,455 64	
		$5,522 49

T. A. PINKNEY, *Clk.*
By H. W. SPENCER, *Dep'ty Clk.*

KEY WEST, *June 12th*, 1841.

UNITED STATES OF AMERICA,
Southern district of Florida:

I, Theodore A. Pinkney, clerk of the superior court of said district, do hereby certify that *that* the foregoing pages contain a true and complete copy of the record of the proceedings of said court in the case of the petition of William H. Wall and John H. Geiger vs. James B. Andrews.

Given under my hand and the seal of said court, in Key West in said district, this second day of September, A. D. one thousand eight hundred and forty-one.
[SEAL.]

T. A. PINKNEY, *Clerk*,
By H. W. SPENCER, *Depty Clk.*

I, William Marvin, judge of the United States court for the southern district of Florida, hereby certify that Theodore A. Pinkney, esq., is the clerk of said court, that Henry W. Spencer is the deputy clerk of said court, and that full faith and credit are and ought to be given to their acts as such clerk and deputy. That the seal attached to the foregoing certificate is the seal of said court. That the signature to said certificate is the genuine signature of said Spencer; and that said attestation is in due form of law.

Given under may hand this 2d day of September, A. D. 1841.

(Signed) WILLIAM MARVIN.

And at another day, to wit: on the eighth day of January, A. D. one thousand eight hundred and forty-two, at a court of appeal for the Territory of Florida, continued and held at the court-house in the city of Tallahassee, came the parties by *the* attorneys, and the appellee moved the court to dismiss this appeal, which motion was

overruled; and the record of the proceedings and decree having been duly filed on the thirtieth day of November, one thousand eight hundred and forty-one, and the appeal docketed, and the case being called on, it is this day argued by L. A. Thompson, esq., for appellant, and James D. Westcott, jr., for appellee, and the court takes time to advise.

And at another day, to wit: on the fifteenth day of January, A. D. one thousand eight hundred and forty-two, at a court of appeals for the Territory of Florida, continued and held at the court-house in the city of Tallahassee, this cause having been argued, and the court having taken time to advise thereon, and maturely consider the same, on this day the hon. Dillon Jordon, president of the court, delivered the following opinion of the court, and pronounced the following decree, viz:

Court of Appeals, January, 1842.

WILLIAM H. WALL and JOHN H. GEIGER
vs.
JAMES B. ANDREWS.

This case has been brought up upon a decree of the superior court for the southern district sitting in admiralty, awarding to the petitioners a proportion of the salvage decreed against the ship Mississippi in favour of the sloop "Globe."

The following exceptions were taken in the court below:

1st. That the petitioners had no right to come into court in this summary manner.

2d. That the consortship was entered into between the masters of the Globe and the George Washington, and that they had no authority to bind the owners and the crews.

3d. That the master of the Globe (Andrews) with whom the consortship was made, having temporarily left the vessel, and placed Greene in command, Greene, the owners and the crew could not be bound by any consortship previously made. That the consortship being indefinate as to duration, must be held binding no longer than the respective masters continued in command.

We may consider the first exception as an informal protest to the jurisdiction of the court, and of course a denial that the contract of consortship, as alleged and admitted, was within the jurisdiction of the court.

Since the establishment of the judicial tribunals of the United States under the Constitution, there have been important decisions upon the subject of the jurisdiction of the admiralty.

The terms admiralty and maratime jurisdiction, according to etymology and received use, extend to all things done upon and relating to the sea, to transactions relating to commerce and navigation, and to torts and injuries upon the sea. Dunlap adm. Pra, (42.)

By repeated decisions in the United States, the construction given

by the English courts of common law, the statutes of Richard 2d restricting admiralty jurisdiction, has been repudiated. And it is now held that the delegation of the cognisance "of all civil cases of admiralty and maratime jurisdiction," to the courts of the United States, comprehend all maratime contracts, torts and injuries, such as charter parties, affreightments, marine hypothecations and contracts for maratime services, &c. In Deleird vs. Boit, 2 Gullison's Rep. (399,) it is held that the admiralty has jurisdiction over all maratime contracts wheresoever the same may be made, and whatever may be the form of the stipulation. From both American and English decisions, it is clearly deducible, that contracts wholly upon land, and refering solely to terrene affairs, are not recognisable in courts of admiralty and maritime jurisdiction, but only such as are maratime in their nature. In 1st Peter's adm. 231, and Gilpin's Rep., 473, it is held that the "subject matter" of the controversy generally determines the question of admiralty jurisdiction, and not the place of making the contract. It is alleged and admitted, that this was a consortship entered into previously to the services rendered the ship Mississippi, between the masters of the sloop Globe and the George Washington, by which they agreed to divide their respective earnings or gain between each other, their crews, and the owners of the respective vessels in a certain proportion. The Globe was to be rated at 63 tons, and the George Washington at (53) tons, and the number of men each vessel might have on board at the time that any money might be earned." It also appeares that the usual employment of these vessels was that of "wrecking."

We have been unable from the consideration we have given to this contract of consortship, to determine otherwise than that it is a maratime contract. By it the contracting parties engage to divide among themselves the profits which each may realise from services performed at sea, in rescuing vessels and their cargoes which may be driven upon the reef. It is certainly not a contract arising "wholly on land and refering to terrine matters," but it refers exclusively to marine matters.

Viewing this then as a contract, maratime in its nature, no doubt can be entertained of the jurisdiction of the court below, and that it was competent for the petitioners to adopt this mode of proceeding for their share of the salvage.

The court having thus the controul of the fund, it being in legal parlance "in *custodia legit*," it was competent for the court to order its distribution among the parties entitled upon their application. In support of this position, reference is had to the case of Westcot vs. Bradford, 4th Washington Rep. (493.) It is there broadly assumed "that courts of common law, as well as of admiralty, have jurisdiction over funds brought into court under their process, and to have and determine the claims of third persons to a distribution of the fund."

B.

In the case of Gardner and others against the ship New Jersey, 1st Peter's ad. Rep. (223,) a claim was made by the master, and also a physician, for services rendered on board, to be paid out of the surplus remaining of the proceeds of the sale after the payment of marriners' wages. In that case it was held that the ship was hypothecated for advances made by the master, but the claim of the physician was disallowed upon the ground that it was a personal contract. It was there held, that in order for the admiralty jurisdiction to attach, it should appear "that the sum claimed out of the surplus or remnant was either of itself or in its origin a lien on the ship or other things out of which the moneys were produced."

By submitting this case to a fair and reasonable construction, it will be perceived that it does not militate against the defenition we have given as to what constitutes a maratime contract. To infer from this case that the admiralty jurisdiction only attached when there was a lien upon the ship or other thing out of which the money was produced, would be a forced deduction, and would restrict the jurisdiction of the courts of admiralty to much narrower limits than those assigned them by the English courts of common law after a contest of two centauries.

In this case against the New Jersey, the learned judge remarked, that he had adopted as a guide in all such cases, the principles of the civil, chancery and common law on the subject of trusts and liens. We will imitate his example in disposing of the case before us.

In page (233) in the same, case he remarks: "That if claims or liens are legally attached to things or moneys under the cognisance or within the jurisdiction of the admiralty, this court has power to decide respecting them." Assimilating this consortship to a copartnership at common [law], it cannot be questioned, that if one of the partners had received the whole fund he would have held it in trust for the association, and could have been compelled in chancery to distribute pro rata a portion; if one of the consortors had received the whole salvage, he would have held it in trust for his fellow consortors, and might have been compelled in admiralty to distribute. Here the fund was in court, and the claims of all who were parties to the consortship attached to it. In the same case the judge holds "that the court having possession of the principal it has controul over its incidents: thus, if the original cause arose at sea, and matters happened on land dependent upon it, the admiralty has still jurisdiction, 232.

In the case before us it is manifest that the original cause, (to wit) services rendered the Mississippi, occured at sea. The same judge also declares in the same case, in page (235), "that those who could not sue in the admiralty are excluded from distribution of surplus and remnant;" ergo, it follows, then, that those who could sue

in admiralty are entitled to distribution. If our interpritation of this consortship be correct, the petitioners could have unquestionably proceeded in admiralty against their associates for a distribution of this salvage, if they had received it or withdrawn it from the registry, and having thus the power to proceed originally in admiralty, it follows, of course, that they can petition for their share of it while it is under the controul and in the custody of the court.

As to the second exception, that the masters of these vessels could not bind the owners and crews by such contract. In Abott on shipping, 132, and 3d Kent's Com. (161), it is held, "that the master is the confidential agent of the owners; he has an implied authority to bind them, without their knowledge, by contracts relative to the usual employment of the vessel." Cowper (636), 8th Term Rep. (531), whether the contract of the master shall be binding on the owner depends upon its nature; if it be relative to the usual employment of the vessel, it is binding. It cannot be denied in this case that wrecking was the usual employment of these vessels, and such being the fact the court must and do consider this contract as one within the scope of the master's authority, and binding upon the owner.

As to the third exception, that a temporary change of masters was *per se* a dissolution of the consortship, and that the consortship being indefinite as to duration, must be held binding no longer than the respective masters continued in command.

When a contract is entered into which does not contain terms definitively prescribing its duration, or the mode of rescinding it, the courts will invariably give it such a construction as will effectuate the intention of the parties and inhabit evry act which would be in fraud of the contract. The reasoning of the learned judge below upon this point is conclusive to the mind of this court. He says, "if consortships solemnly entered into would be broken or avoided by a change of masters, immence frauds would ensue. Masters who happen to be consorted would resign their command and substitute some one else, as soon as they received inteligence that their services would be needed. The parties may make their own bargain, and if they specify the terms the court will enforce them. But if the terms are not specified, if they simply consort, man for man and ton for ton, as in this case, without further terms, no change of masters of either vessel will dissolve the consortship." We therefore think that such a contract as this would not be dissolved by a temporary change of masters, and that its dissolution could not be effected without reasonable notice. We also think this consortship was in full force and unrevoked at the time the salvage was earned by the Globe.

As to the objection that the proper parties were not before the court, we concur with the judge below in the opinion "that, notwithstanding the general rule which requires all parties interested to be before the court, yet notice to the proctors in admiralty is no-

tice to all interested, and also that, in admiralty, part may sue and part defend for themselves and all others interested. When all parties in interest are not before the court, it will, in adjudicating between those who are before it, take care that no injustice is done to those who are not. But in this case Greene, the temporary master of the Globe, was no party to the consortship, and any decree rendered by the court, awarding a proportion of the salvage to the George Washington, will not affect his claim to a portion of the salvage assigned to the owners and crew of the Globe. It is a maxim of the law that judgments and decrees are only conclusive and binding upon the parties thereto, and their privies in interest or estate; that, as to all others, it is a proceeding *intre alios*. The opinion of this court being with the petitioners upon the decree for distribution, it is deemed unnecessary to express an opinion as to the order of the court below, directing the money to be paid over to the petitioners after this appeal was taken.

In this case the court (if any doubt had existed) would have felt themselves constrained to recognise and adopt this consortship into the family of maratime contracts. There seems to be no doubt that this contract is of frequent occurrence at Key West, a point more perrilous to the enterprising and adventuous mariner than any other on this coast. That on this reef there is an unusual demand for the services of that bold and hardy class of men, denominated "*wreckers.*" Here they can, by their skill and exertions contribute greatly to the cause of commerce and humanity, by rescuing from the perils of the sea the lives and property of their fellow men. With a view to the attainment of so desireable an end, the courts of admiralty should endeavour to maintain and enforce such contracts as this class of men may enter into among themselves, for the purpose of extending their usefulness, and in proportion enhancing their gains.

It is therefore adjudged and decreed that the decree rendered in the court below be and the same is hereby affirmed, with costs.

(Signed) DILLON JORDON, *Judge.*

Know all men by these presents, that we, James B. Andrews, Fielding A. Brown, and Philip J. Fontane, all of Key West, in the Territory of Florida, are held and firmly bound unto William H. Wall and John H. Geiger, in the penal sum of three hundred dollars lawful money of these United States, for the payment whereof we do hereby bind ourselves, our heirs, executors and administrators, firmly by these presents. Signed with our hands, and sealed with our seals, this 18th day of July, A. D. eighteen hundred and forty-two.

The condition of the foregoing obligation is such, that whereas an appeal to the Supreme Court of the United States was prayed on the fifteenth day of January, A. D. 1842, from the decree of the courts of appeals of the Territory of Florida, confirming the decree

of the honorable William Marvin, the judge of the superior court for the southern judicial district of Florida, in a certain cause civil and maratime, wherein William H. Wall and John H. Geiger were petitioners or libelants, and James B. Andrews was respondent.

Now, if the said Andrews shall prosecute his said appeal with due diligence, and shall pay said decree, if the same shall be affirmed, with all costs and damages that may be adjudged against him, then this obligation to be void, otherwise to remain in full force and virtue.

In testimony whereof, we have hereunto set our hands and affixed our seals the day and year above mentioned, at Key West aforesaid.

JAMES B. ANDREWS, [SEAL.]
F. A. BROWNE, [SEAL.]
P. J. FONTANE, [SEAL]

Signed and sealed in the presence of—
WM. R. HACKLEY.

I approve of the securities in the above bond. July 18th, 1842.
WM. MARVIN, *Judge.*

Filed this 1st day of August, 1842.

I, Richard T. Birchett, clerk of the court of appeals for the Territory of Florida, do hereby certify, that the foregoing transcript contains a true copy of the record and proceedings in the case of John B. Andrews, appellant, vs. William H. Wall and John H. Geiger, appellees, in said court.

In testimony whereof, I have hereunto set my hand and seal of said court, this 21st day of December, A. D. 1842, and of
[SEAL] the independence of the United States the 67th year.
R. T. BIRCHETT, *Clk.*

TERRITORY OF FLORIDA, *Leon county, ss.*

I, Samuel J. Douglas, judge of the United States court for the middle district of Florida, and only judge of the superior court of law for the county of Leon, Territory aforesaid, do certify that R. T. Birchett, who hath given the foregoing certificate, is clerk of the superior court of law for Leon county, and by virtue of his said office is clerk of the court of appeals for said Territory, and that his said attestation is in due form.

Given under my hand this 30th day of December, A. D. 1842.
SAMUEL JAMES DOUGLAS,
Judge U. S. district of Middle Florida.

Filed Sept. 11th, 1843.